

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK ANTOINE FOSTER,

No. 07-5030 MMC

Plaintiff,

**ORDER GRANTING IN PART  
DEFENDANTS' MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, TO STAY;  
STAYING ACTION; DIRECTIONS TO  
PARTIES; VACATING CASE  
MANAGEMENT CONFERENCE**

v.

OPERATION DIGNITY, INC., et al.,

Defendants

Before the Court is defendants' "Motion to Dismiss, or in the Alternative, to Stay," filed December 4, 2007. Plaintiff, proceeding pro se, has filed a response, which, although denominated an opposition, includes a request that the Court stay the above-titled action. Having read and considered the papers filed in support of and in response to the motion, the Court finds the matter suitable for decision on the papers, VACATES the hearing scheduled for January 11, 2008, and rules as follows:

1. Defendants and plaintiff agree that Foster v. Operation Dignity, Inc., et al., No. RG06302322, the consolidated state court action filed by plaintiff, raises issues "identical" to those presented herein. (See Defs.' Mot. at 5:6; Pl.'s Opp. at 3:2.) Further, as noted, plaintiff agrees that a stay is warranted, specifically, "until a conclusion has been reached regarding the complaints in state court." (See Pl.'s Opp. at 4:7-8.) Under such


1 circumstances, and given that plaintiff seeks damages herein, the Court hereby GRANTS  
2 defendants' motion to the extent defendants seek a stay, and, accordingly, hereby STAYS  
3 the instant action pending entry of final judgment in the state court proceedings. See  
4 Kirkbride v. Continental Casualty Co., 933 F. 2d 729, 734 (9th Cir. 1991) (holding  
5 abstention under "Colorado River" doctrine is appropriate "in situations involving the  
6 contemporaneous exercise of concurrent jurisdiction"); see also Gilbertson v. Albright, 381  
7 F. 3d 965, 968 (9th Cir. 2004) (holding, where abstention doctrine is properly invoked,  
8 district court may not "dismiss actions where damages are at issue; rather, damages  
9 actions should be stayed until the state proceedings are completed").

10 2. The parties are hereby DIRECTED to file, no later than Friday, August 1, 2008, a  
11 Joint Status Report, setting forth therein the status of the consolidated state court  
12 proceeding.

13 3. The Case Management Conference scheduled for January 11, 2008 is hereby  
14 VACATED.

15 **IT IS SO ORDERED.**

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17 Dated: January 4, 2008

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19 MAKINE M. CHESNEY  
20 United States District Judge  
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